SUPREME COURT OF THE UNITED STATES.

Nos. 180, 189, 190.—October Term, 1920.

180	Southern Iowa Electric Company, Appellant, *vs.* The City of Chariton, Iowa, et al.	Appeals from the District Court of the United States for the Southern District of Iowa.
189	Iowa Electric Company, Appellant, *vs.* City of Fairfield, Iowa, et al.	
190	Muscatine Lighting Company, Appellant, *vs.* City of Muscatine, Iowa, et al.	

[April 11, 1921.]

Mr. Chief Justice White delivered the opinion of the Court.

At the time these suits were begun the appellants were engaged in supplying electricity or gas to the municipal corporations who are the appellees. This service was being rendered by virtue of ordinances conferring franchises to use the city streets during 25 years in two of the cases and 20 years in the other. The ordinances contained a schedule of maximum rates. After they were in effect a few years the three suits which are before us were begun against the cities with the object of preventing the enforcement of the maximum rates specified in the ordinances, on the ground that such rates were so unreasonably low that their continued enforcement would deprive the corporations of remuneration for the services by them being performed and in fact, if enforced, would result in the confiscation of their property in violation of the due process clause of the 14th Amendment to the Constitution of the United States. In the three cases the court granted a temporary injunction restraining the enforcement of the

maximum rates and allowed an order permitting, pending the suits, a higher charge.

The cases were submitted upon the pleadings and without the taking of testimony upon issues which presented the contention, that the ordinances were contracts and therefore the maximum rates which they fixed were susceptible of continued enforcement against the corporations, although their operation would be confiscatory. In one opinion, applicable to the three cases, the court stated its reasons for maintaining this view, but directed attention to the fact that no proof had been offered concerning the confiscatory character of the rates, and pointing out that as such subject might become important on appeal, it would be necessary to restore the cases to the docket for proof in that regard unless the situation was remedied by agreement between the parties. Thereupon the pleadings were amended so as to directly present, separately from the other issues in the case, the right of the cities to enforce the ordinance rates in consequence of the contracts, without reference to whether such rates were in and of themselves confiscatory. Upon its opinion as to the existence of contracts and the power to make them as previously stated, the court entered decrees enforcing the ordinance rates which are now before us for review because of the constitutional question involved.

Two propositions are indisputable: (a) That although the governmental agencies having authority to deal with the subject may fix and enforce reasonable rates to be paid public utility corporations for the services by them rendered, that power does not include the right to fix rates which are so low as to be confiscatory of the property of such corporations, *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362; *Smyth* v. *Ames*, 169 U. S. 466; *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 442; *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 17; *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 41; *Minnesota Rate Cases*, 230 U. S. 352, 434; *Cedar Rapids Gas Co.* v. *Cedar Rapids*, 223 U. S. 655; *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153; *Denver* v. *Denver Union Water Co.*, 246 U. S. 178, 194; and (b) that where, however, the public service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a par-

ticular time, the enforcement of such rates is controlled by the obligation resulting from the contract and therefore the question of whether such rates are confiscatory becomes immaterial. *Freeport Water Co.* v. *Freeport*, 180 U. S. 587, 593; *Detroit* v. *Detroit City Ry. Co.*, 184 U. S. 368; *Knoxville Water Co.* v. *Knoxville*, 189 U. S. 434, 437; *Cleveland* v. *Cleveland City Ry. Co.*, 194 U. S. 519; *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, 273; *Minneapolis* v. *Minneapolis Street Ry. Co.*, 215 U. S. 417; *Columbus Ry. Power & Light Co.* v. *City of Columbus*, 249 U. S. 399.

It follows that as the rates here involved are conceded to be confiscatory they cannot be enforced unless they are secured by a contract obligation. The existence of a binding contract as to the rates upon which the lower court based its conclusion is, therefore, the single issue upon which the controversy depends. Its solution turns, first, upon the question of the power of the parties to contract on the subject, and second, if they had such power, whether they exercised it.

As to the first, assuming for the sake of the argument only, that the public service corporations had the contractual power, the issue is, Had the municipal corporations under the law of Iowa such authority? Its possession must have been conferred, if at all, by section 725 of the Iowa Code of 1897 which deals with that subject. That statute came before the Supreme Court of Iowa for consideration in the very recent case of *Town of Woodward* v. *Iowa Railway & Light Co.*, Ia. , 178 N. W. 549. That was a suit by the Town of Woodward to compel the Light Company to continue to furnish electric lighting at the rates fixed by the ordinance conferring upon the company its franchise to maintain and operate its plant in the town. The company resisted on the ground that the rates had become confiscatory and were not enforceable. Testimony offered by the company to establish the confiscatory character of the rates was objected to by the town, which asserted that the acceptance by the company of the ordinance bound it by contract to furnish the service at the rates therein prescribed whether or not they were confiscatory, and that the evidence offered was therefore immaterial. The evidence was received, subject to the objection, and the court, finding the rates to be confiscatory, sustained the company's contention and dismissed

the bill. Upon appeal by the town, the Supreme Court, affirming the action of the trial court, said:

"The defendant's franchise in the town of Woodward was granted in June, 1912, by ordinance duly enacted by the city council and duly approved by vote of the electors, as required by section 720 of the Code. Section 6 of the ordinance which granted the franchise specified the rates to be charged by the defendant to consumers. The term of the franchise was 25 years. The essence of the plaintiff's contention is that the enactment of this ordinance (including the franchise, and the rates and the approval of the same by the electors), and the practical acceptance of the same by the utility corporation, constituted a contract binding as such both upon the town and upon the utility corporation. The defendant resists this contention and likewise denies that there is any power conferred by statute upon the city council to enter into contract on the subject of rates. The issue at this point is the controlling one in the case. The question thus at issue is answered by section 725 of the Code of 1897, which provides as follows:

" 'Sec. 725. *Regulation of Rates and Service.*—They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, water, light or power, and to supply said city or town with water for fire protection, and with gas, water, light or power for other necessary public purposes, *[and to regulate and fix the rent or rates for water, gas, heat and electric light or power] . . . and these powers shall not be abridged by ordinance, resolution or contract.'

"It will be noted from the foregoing that the legislative power to fix rates is conferred by this section upon the city council. The legislative power thus conferred is a continuing one, and may not be abridged or bartered away by contract or otherwise. . . . There was a time in the history of our legislation when the right of contract as to rates was conferred by statute upon the city council. . . . By the revision and codification of 1897 the right of contract as to rates for utilities of this character was entirely eliminated, and the legislative power to regulate rates was conferred upon the city council in all cases. The reason for the change of method is obvious enough. Under the contract method, the rights of the public were often bartered away, either

*The words in brackets are found in the section, but are not embraced in the provisions quoted by the court, although as shown by the language of the court as to the rate provision they were early taken into view and applied in construing the statute.

ignorantly or corruptly, and utility corporations became empowered through the contractual obligations to enforce extortionate rates. The net result of the progressive legislation is found in our present section 725, whereby it is forbidden to any existing city council to bind the city to any rate for any future time. The power of regulating the rate is always in the present city council. It must be said, therefore, that the rates fixed by section 6 of the ordinance hereinbefore referred to, were not fixed by contract."

Indeed, the doctrine thus expounded was but a reiteration of the rule of the Iowa law laid down in previous cases. *City of Tipton* v. *Tipton Light & Heating Co.*, 176 Ia. 224; *Iowa Railway & Light Co.* v. *Jones Auto Co.*, 182 Ia. 982; *Town of Williams* v. *Iowa Falls Electric Co.*, Ia. , 170 N. W. 815. And again, more recently, in *Ottumwa Railway & Light Co.* v. *City of Ottumwa*, Ia. , 178 N. W. 905, the court referring to the *Town of Woodward* case and to the doctrine therein announced based upon the significance of section 725 of the Code of 1897, thus restated its former conclusion on that subject:

"That statute in positive terms forbids any abridgment of the right to regulate and fix charges of service corporations named in the statute, either by ordinance, resolution, or contract. No one would now contend, in the teeth of the statute prohibition, that there can be a valid contract fixing permanent rates. As to corporations named in that statute we have held repeatedly that there can be no contracting that rates fixed for service shall not be changed. See Tipton *v.* Light Co., 176 Iowa, 224, 157 N. W. 844; Selkirk *v.* Gas Co., 176 N. W. 301. And see San Antonio Co. *v.* City (D. C.) 257 Fed. 467. To like effect is Iowa Co. *v.* Jones, 182 Iowa 982, 164 N. W. 780. And in the last case it is held that the fixing of maximum rates in a franchise ordinance is therefore not a contract that such rates may not be changed before the time stated in such ordinance has lapsed, and that approval by the electors of rates in the franchise is merely an approval of the rates fixed by the franchise, as rates temporarily settled, with the understanding that the same might be changed either upward or downward."

The total want of power of the municipalities here in question to contract for rates, which is thus established, and the state public policy upon which the prohibition against the existence of such authority rests, absolutely exclude the existence of the right to enforce, as the result of the obligation of a contract, the concededly confiscatory rates which are involved, and therefore conclusively

demonstrate the error committed below in enforcing such rates upon the theory of the existence of contract. And, indeed, the necessity for this conclusion becomes doubly manifest when it is borne in mind that the right here asserted to contract in derogation of the state law and of the rule of public policy announced by the court of last resort of the State is urged by municipal corporations whose every power depends upon the state law. *Covington* v. *Kentucky*, 173 U. S. 231, 241; *Worcester* v. *Worcester Street Ry. Co.*, 196 U. S. 539, 548; *Braxton County Court* v. *West Virginia*, 208 U. S. 192; *Englewood* v. *Denver & South Platte Ry. Co.*, 248 U. S. 294, 296; *Pawhuska* v. *Pawhuska Oil Co.*, 250 U. S. 394, 399.

Decrees reversed and causes remanded for further proceedings in conformity with this opinion.

A true copy.

Test:

Clerk Supreme Court, U. S.